

News ReleaseNational Labor Relations Board

October 25, 2010

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Board orders compound interest, electronic notice posting

Decisions update NLRB remedial actions to reflect current practices

In a pair of decisions made public today, the National Labor Relations Board adopted two new remedial policies: adding daily compound interest to backpay and other monetary awards and requiring many employers and unions to notify workers electronically of NLRB orders in unfair labor practice cases. The Board's stated goal was making Board remedies more effective and in line with current legal and workplace practices.

Going forward, interest on backpay and all other monetary awards will be compounded daily, following the evolving practice of other legal regimes including the Internal Revenue Code. The decision in *Kentucky River Medical Center*, 356 NLRB No. 8, was unanimous.

"Our primary focus must be on making employees whole," the Board noted in its decision in *Kentucky River*. "After careful consideration, and based on the Board's experience in the decades following the initial decision to order interest on backpay awards, we have concluded that compound interest better effectuates the remedial policies of the Act than does the Board's traditional practice of ordering only simple interest and that, for the same reasons, interest should be compounded on a daily basis, rather than annually or quarterly."

Also, employers who customarily communicate with their employees electronically, either through e-mail or an Internet or Intranet site, will be required to post remedial notices the same way, in addition to posting a paper notice to a bulletin board. The same will hold true for union respondents who customarily communicate with their members electronically. The decision in *J. Picini Flooring*, 356 NLRB No. 9, was 3-to-1, with Chairman Wilma Liebman and Members Craig Becker and Mark Pearce in favor and Member Brian Hayes dissenting.

"We find that given the increasing prevalence of electronic communications at and away from the workplace, respondents in Board cases should be required to distribute remedial notices electronically when that is a customary means of communicating with employees or members," the majority wrote in its opinion.

Dissenting, Member Hayes said his colleagues' decision improperly equates "the traditional notion of 'where notices are customarily posted,' with the notion of 'how employers customarily communicate with employees,' "thereby "transform[ing] what has heretofore been an extraordinary remedy into a routine remedy. Further, they have done so without considering practical implementation problems presented by the tremendous variation in the types of electronic media involved."

On both issues, the Board had sought briefs from interested parties in addition to the respondents. On the question of compound interest, amicus briefs were received from the National Right to Work Legal Defense Foundation, the Service Employees International Union, and the AFL-CIO. On electronic notice posting, amicus briefs were received from the AFL-CIO, Service Employees International Union, the National Right to Work Legal Defense Foundation, the U.S. Chamber of Commerce, Bodman LLP, and the Texas Association of Business.

The National Labor Relations Board is an independent federal agency vested with the power to safeguard employees' rights to organize and to determine whether to have unions as their bargaining representative. The agency also acts to prevent and remedy unfair labor practices committed by private sector employers and unions.

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